

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

alcohol wipes on the floor and falling down. She stopped work on March 16, 2006. OWCP accepted appellant's claim for acute back strain, hip sprain, and bilateral knee contusions and paid wage-loss compensation benefits. On April 30, 2006 appellant was authorized to return to full-time light duty. She continued to undergo medical treatment for lower back and left leg pain with intermittent periods of disability.

On August 28, 2013 appellant requested disability compensation for the period August 10 to 16, 2013. She submitted hospital preoperative evaluation records dated May 8, 2011 and February 21, 2013 and an operative note for a lumbar steroid injection.

In an August 30, 2013 work restriction note, Dr. John Marino, Board-certified in physical medicine and rehabilitation, stated that appellant had put in papers for reasonable accommodation because her request to use a shuttle ride was denied. He recommended that she not work until September 16, 2013.

In a letter dated September 19, 2013, OWCP advised appellant that the evidence submitted indicated that she may have sustained a recurrence of disability. It requested that she submit a Form CA-2a if she believed her disability beginning August 10, 2013 was causally related to her March 14, 2006 employment injury and to submit medical evidence to establish that her inability to work was causally related to her accepted conditions.

Appellant submitted hospital records dated February 21, 2013 which indicated that she received a lumbar steroid injection for left lumbar radiculopathy.

In a decision dated October 25, 2013, OWCP denied appellant's claim finding insufficient evidence to establish a recurrence of disability due to a change or worsening of her accepted March 14, 2006 conditions.

In an appeal request form dated November 20, 2013 and received by OWCP on December 2, 2013, appellant requested reconsideration. She resubmitted medical reports dated January 7 and 20, 2009 from Dr. Isaac Cohen, Board-certified in physical medicine and rehabilitation, regarding treatment for left leg weakness and chronic low back pain and the February 21, 2013 hospital records. Appellant also submitted a January 30, 2014 anesthesia record.

In various reports by Dr. Marino dated October 14 and December 31, 2013, he related his treatment for appellant's ongoing lower back and left leg pain. Upon examination, he observed good strength in her legs and increased pain in her lower back and lumbar flexion. Dr. Marino also noted some pain with passive rotation of the left hip. He reported that an x-ray dated December 31, 2013 demonstrated well-preserved joint space with no joint margin osteophytes or fractures. Dr. Marino recommended that appellant continue with lumbar injections.

By decision dated February 25, 2014, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant further merit review under 5 U.S.C. § 8128(a). It determined that the medical evidence submitted was not relevant to the issue or repetitive of evidence previously submitted.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.<sup>2</sup> OWCP regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his or her right through a request to the district Office.<sup>3</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup>

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</sup> If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>7</sup>

### **ANALYSIS**

OWCP accepted that on March 15, 2006 appellant sustained back strain, hip sprain, and bilateral knee contusions in the performance of duty. Appellant stopped work and returned to full-time limited duty in April 2006. On August 28, 2013 she requested disability compensation for the period August 10 to 16, 2013. Appellant submitted medical records including hospital records dated May 8, 2011 and February 21, 2013 and various reports by Dr. Marino. By decision dated October 25, 2013, OWCP denied appellant's claim finding insufficient evidence to establish that she sustained a recurrence of disability due to a change or worsening of her accepted March 14, 2006 conditions.

Appellant requested reconsideration by appeal request form received by OWCP on December 2, 2013. In a decision dated February 25, 2014, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant further merit

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<sup>2</sup> 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>3</sup> 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>4</sup> *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

review under 5 U.S.C. § 8128(a). The only issue for determination before the Board is whether OWCP properly denied appellant's request for reconsideration.

Along with her request for reconsideration, appellant resubmitted medical reports dated January 7 and 20, 2009 from Dr. Cohen regarding treatment for left leg weakness and chronic low back pain and the February 21, 2013 hospital records. The submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>8</sup> These reports, therefore, are insufficient to warrant merit review of appellant's claim.

Appellant also submitted various medical documents including a January 30, 2014 anesthesia record and reports by Dr. Marino dated October 14 and December 31, 2013. Dr. Marino treated appellant for ongoing lower back and left leg pain. Upon examination, he observed good strength in her legs and increased pain in her lower back and lumbar flexion. Dr. Marino also noted some pain with passive rotation of the left hip. He recommended that appellant continue with lumbar injections. Although these medical documents constitute new evidence, they do not provide any new or pertinent information regarding whether appellant was unable to work beginning August 10, 2013 as a result of her accepted conditions. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup> Accordingly, this evidence does not constitute a basis for further merit review of appellant's claim.

On appeal appellant alleges that her original back and left leg conditions did not completely heal due to the constant aggravations of her job. She states that she made a mistake in not sending in documents with her reconsideration request and noted that she was now submitting those additional documents. The Board's jurisdiction, however, is limited to evidence that was before OWCP at the time it issued its final merit decision. Accordingly, it may not consider this evidence for the first time on appeal.<sup>10</sup> Appellant may submit that evidence to OWCP along with a request for reconsideration.

Appellant did not meet any requirements of 20 C.F.R. § 10.606(b)(2). She did not submit any evidence along with her request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law, or advances a relevant legal argument not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to reopen the case for review of the merits.

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP, or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen her case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

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<sup>8</sup> *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

<sup>9</sup> *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's December 2, 2013 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board